



TO: Members and Staff, Ohio General Assembly
FROM: Jack Shaner, OEC Deputy Director
DATE: December 22, 2014
SUBJECT: Moving Forward on Agricultural Pollution Reduction, Lake Erie Basin Water Protection, and Oil and Gas Regulation and Enforcement

The Ohio Environmental Council gratefully acknowledges the progress proposed in House Bill 490, especially to helping reduce the risk of farmland runoff-fueled toxic algae. The Kasich administration and the House of Representatives, deserve credit for their sensible proposals to restrict the spreading of manure and fertilizer on frozen, snow-covered, and saturated ground. We look forward to working with the new General Assembly, hopefully to pass the ban and make it immediate and statewide along with other important policies (see below).

We strongly opposed, though, several controversial provisions in HB 490, including House provisions to weaken much of Gov. Kasich's proposed new penalties for oil and gas law violations and to repeal several existing civil and criminal penalties for oil and gas violations in current Ohio law. We also strongly objected to the House amendment to green-light large water withdrawals of Lake Erie basin water with no meaningful review of the potential impacts to fish habitat and water quantity and quality in tributaries. In the end, we were relieved the Senate set the bill aside.

As we look forward to a new General Assembly, the OEC proposes the following steps forward on the policy areas broached by HB 490. We would be pleased to work with you and all stakeholders on these proposals.

1. Protect Drinking Water, Shoreline Communities and Anglers and Boaters from Toxic Algae

Lake Erie and Ohio's inland lakes need to go on a diet--[a nutrient diet](#). The loading of phosphorus and nitrogen from farm fields, especially, and other sources is fueling the growth of toxic algae each summer. Ohio needs to take more steps to reduce the risk of toxic algae outbreaks and to ensure there is never another weekend without water like the one suffered by Toledo this past summer.

OEC Recommendations:

- Require all applicators of livestock manure be trained and certified by the ODAg in nutrient management.
- Increase accountability for producers who use the "manure loophole" that allows permitted livestock operations to transfer manure to other people in place of developing and adhering to manure management plans.
- Immediately ban statewide the spreading of manure or fertilizer on frozen, snow-covered or saturated soil.
 - Require the ODAg to track requests for exemptions from the prohibition.

2. Protect Air + Water Quality, Local Residents and Emergency Responders from Oil + Gas Incidents

Recent blow-outs, leaks, spills and incidents have graphically confirmed the serious risks posed by shale gas--including the current, week-long [uncontrolled leak of raw gas](#) from a shale gas well near Sardis, Ohio that has forced the evacuation of 30 local residents for more than a week. (Watch the [video interview](#) with local resident Randy Heater about what it's like to be evacuated and to struggle for information.) Now is the time, as suggested by Gov. Kasich, to strengthen protections and to get tough with scofflaws. First responders should not be left another day to struggle for full and immediate access to the complete inventory of all chemicals used and stored at well sites--including trade-secreted chemicals. It took days for firefighters to fully extinguish the flames at a Monroe County shale-gas well pad fire this past June. Left in the fire's wake was the evacuation of 25 homes and a 5-mile-long spill that killed 70,000 fish. Also left struggling were emergency responders and public water utilities, who could not learn for several days the full identity of all chemicals stored and used at the well pad fire site. (See the [Columbus Dispatch story](#).) Ohio law contributed to this unacceptable situation: ORC Sec. [1509.10\(J\)\(2\)](#)--enacted at the request of the oil and gas industry in 2011--actually prohibits ODNR from sharing trade secret information with emergency responders.

OEC Recommendations:

- Strengthen minimum distance setbacks separating all new oil and gas wells from occupied dwellings, waterways, drinking water intakes and other areas sensitive to a fire, explosion, spill or chemical leak.
- Dedicate revenue from the oil and gas severance tax for training and equipment for emergency response to oil and gas incidents by the Ohio EPA, local fire departments, and emergency management agencies.
- Adopt emergency rules mandating all new + existing horizontal oil and gas wells adopt approved spill prevention + containment measures, such as earthen berms, to control well pad spills.
- Strengthen penalties for oil and gas law violations. NOTE: The House added a provision to HB 490 proposing to repeal 3 violations in existing law. See pp. 34-35 of the [LSC analysis](#) and ODNR Director James Zehringer's [testimony](#).
- Require background checks of compliance history with environmental laws by both a driller's primary corporate owner as well as by any affiliated subsidiaries proposed for a well site.
- Amend the oil and gas trade secrecy law to require the immediate sharing by the well owner of all chemical information with state and local emergency responders, local emergency management agencies, and public water utilities that are responding to or investigating a spill, release, leak, or threatened release.
- Accept the Kasich's Administration's original proposal to require the State Emergency Response Commission, local emergency planning committees and local firefighters--not ODNR--to be the repository of chemical inventory reporting from the oil and gas industry as is required under federal law.

3. Protect Lake Erie Basin Water and Wildlife from Industrial-Scale Water Withdrawals and Uses

Ohio needs a balanced approach to evaluate the potential impact of large water withdrawals from Lake Erie basin water on water quantity, water quality and aquatic wildlife. Gov. Kasich has previously [called for](#) Ohio to include clear standards for water conservation and withdrawals and allow for sufficient evaluation and monitoring of water withdrawals or usage. The OEC agrees that the needs of all water users--industry as well as local communities, recreational users and wildlife--must be balanced when considering a proposed water withdrawal or use. The best way to do that is with solid data based on monitoring and evaluation.

OEC Recommendation:

- Adopt administrative rules to determine -- on a case-by-case basis -- whether a proposed water withdrawal or use from Lake Erie, a tributary, or ground water could have a significant, adverse impact to the water quantity, water quality, or aquatic wildlife of the waterway supplying the water.

4. Protect Lake Erie from open-lake disposal of dredged sediments from harbors and river mouths.

Of all the sediment dredged from Great Lakes river mouths and harbors and disposed of into the Lakes' open waters, more than 80% - 1.5M cubic yards - is from Ohio ports and harbors, alone. That is enough to fill 3-1/2 major league baseball stadiums. The U.S. Army Corps of Engineers plans to dispose of even more dredge material in Lake Erie's open waters next year. The Ohio EPA, though, has raised concerns that sediments dredged from Cleveland's Cuyahoga River are contaminated with toxins. While dredged sediments from the Toledo Harbor are not the major culprit of phosphorus loading in the western Lake Erie basin, there is a small contribution of phosphorus that gets reintroduced into the water column. The Ohio EPA wants to move Ohio in the right direction, finding [beneficial reuses](#) for clean dredged sediments to keep them out of our Great Lake. OEPA Director Butler's proposed win-win can keep ports and harbors open and protect drinking water and wildlife habitat.

OEC Recommendations:

- Support the Ohio EPA's proposal to prohibit disposal of dredged sediments in Lake Erie.
- Support the Ohio EPA's proposal to increase the beneficial reuse of clean dredged sediments.

Conclusion

Sensible policies are available and are urgently needed to better protect life, limb, and property in Ohio's shale gas country and water quantity, quality and wildlife along the shoreline communities of Ohio's "North Coast" and its inland lakes and the local sport anglers, aquatic wildlife, and related travel and tourism businesses that depend upon clean, abundant water and wildlife. The OEC is eager to work with you to move these and other policies swiftly forward in the next General Assembly.



**Jack Shaner | Deputy Director, Sr. Director of Legislative
& Public Affairs**

Ohio Environmental Council

1207 Grandview Avenue, Suite 201, Columbus, OH 43212

(614) 487-5822 desk

(614) 309-1169 cell